

§ 1707.102 Applicability.

This part applies to demands and requests to employees for factual, opinion, or expert testimony relating to official information, or for production of official records or information, in legal proceedings whether or not the United States or the DNFSB is a named party. However, it does not apply to:

- (a) Demands upon or requests for a DNFSB employee to testify as to facts or events that are unrelated to his or her official duties or that are unrelated to the functions of DNFSB;
- (b) Demands upon or requests for a former DNFSB employee to testify as to matters in which the former employee was not directly or materially involved while at the DNFSB;
- (c) Requests for the release of records under the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a; and
- (d) Congressional demands and requests for testimony or records.

§ 1707.103 Definitions.

DNFSB means the Defense Nuclear Facilities Safety Board.

DNFSB employee or employee means:

- (1) Any current or former officer or employee of DNFSB;
- (2) Any contractor or contractor employee working on behalf of the DNFSB or who has performed services for DNFSB; and
- (3) Any individual who is serving or has served in any advisory capacity to DNFSB, whether formal or informal.
- (4) Provided, that this definition does not include persons who are no longer employed by DNFSB and who are retained or hired as expert witnesses or who agree to testify about general matters, matters available to the public, or matters with which they had no specific involvement or responsibility during their employment with DNFSB.

Demand means a subpoena, or an order or other demand of a court or other competent authority, for the production, disclosure, or release of records or for the appearance and testimony of a DNFSB employee that is issued in a legal proceeding.

General Counsel means the General Counsel of DNFSB or a person to whom the General Counsel has delegated authority under this part.

Legal proceeding means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer, or other body that conducts a legal or administrative proceeding. Legal proceeding includes all phases of litigation.

Records or official records and information mean:

- (1) All documents and materials which are DNFSB agency records under the Freedom of Information Act, 5 U.S.C. 552;
- (2) All other documents and materials contained in DNFSB files; and
- (3) All other information or materials acquired by a DNFSB employee in the performance of his or her official duties or because of his or her official status.

Request means any formal or informal request, by whatever method, for the production of records and information or for testimony which has not been demanded by a court or other competent authority.

Testimony means any written or oral statements, including but not limited to depositions, answers to interrogatories, affidavits, declarations, interviews, and statements made by an individual in connection with a legal proceeding.

Subpart B—Requests for Testimony and Production of Documents

§ 1707.201 General prohibition.

No employee may produce official records and information or provide any testimony relating to official information in response to a demand or request without the prior, written approval of the General Counsel.

§ 1707.202 Factors DNFSB will consider.

The General Counsel, in his or her sole discretion, may grant an employee permission to testify on matters relating to official information, or produce official records and information, in response to a demand or request. Among the relevant factors that the General Counsel may consider in making this decision are whether:

- (a) The purposes of this part are met;